HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal No.1 of 2006

Between:

D.R. Enterprises

… Appellant

And

Government of Andhra Pradesh, represented

By its Secretary, Industries and Commerce

(Mines-II) Department, Secretariat,

Hyderabad and three others

… Respondents

::JUDGMENT::

Counsel for the appellant: Sri D. Prakash Reddy, Senior Advocate, assisted by Sri Harender Pershad, Advocate

Counsel for respondent Nos.1 to 3: Government Pleader for Industries and Commerce

Counsel for respondent No.4: Smt.N. Shobha

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March 17, 2006

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated December 23, 2005 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellant for quashing proceedings/orders dated July 13, 2004, May 21, 2005 and May 25, 2005 issued/passed by respondents 1 to 3 respectively.

The appellant is a proprietorship concern and respondent No.4 is a registered company. Sri K. Dhananjay Reddy is proprietor of the appellant, while his brother Sri K. Subba Reddy is Managing Director of Respondent No.4. The appellant applied for grant of lease of surface rights to an extent of Ac.4-96 cents comprised in Sy.No.60 (part) and 63/4 (part) of which K. Subba Reddy is the pattadar. Deputy Director, Mines and Geology, Hyderabad accepted the application of the appellant in 1991 and granted quarry lease for a period of 5 years. Later on, the term of the lease was extended for a period of 15 years commencing from 21-12-1996. After extension of the term of lease, the appellant agreed to transfer the same in favour of Respondent No.4. For this purpose, Sri K. Dhananjay Reddy submitted an application dated November 6, 2001 in the prescribed format i.e., Model Form – R as per the requirement of Andhra Pradesh Mines and Mineral Concession Rules, 1966 (for short 'the Rules'). It, however, appears that the matter was not pursued till October 6, 2003 when Sri K. Dhananjay Reddy filed an application/affidavit before the competent authority conveying his intention to withdraw the transfer application. After one month and one day, he submitted another letter dated November 7, 2003 withdrawing the affidavit/application dated October 6, 2003. The Assistant Geologist inspected the site on January 29, 2004 and submitted report that the functioning of the quarry lease was satisfactory. Thereafter, Director, Mines and Geology, Hyderabad issued proceedings dated 17-2-2004 and granted permission for transfer of the quarry lease in favour of respondent No.4.

The appellant challenged the aforementioned decision by filing writ petition under

Article 226 of the Constitution, which was registered as Writ Petition No.4262 of 2004. The main ground on which the appellant questioned the transfer of lease in favour of respondent No.4 was that in view of application/affidavit dated 6.10.2003, the transfer application filed by Sri K. Dhananjay Reddy will be deemed to have become redundant. The learned Single Judge did not accept the plea of the appellant and dismissed the writ petition vide his order dated 30.4.2004. The relevant extracts of that order are reproduced below:-

> "17. In fact, the facts as already narrated clearly show that third respondent is the Pattadar of the land in question, where mining lease was granted in favour of the petitioner originally and even with reference to the mining lease, the petitioner entered into an agreement with third respondent and allowed third respondent to work under a raising agreement. Further, in view of the close relationship between the proprietor of the petitioner concern and the Managing Director of third respondent, both of them have submitted affidavits as required for transfer of the mining lease from the petitioner to third respondent along with transfer application. But due to the delay in processing and completing the transfer, the petitioner submitted an affidavit/application dated 6-10-2003, proposing to withdraw, and again submitted another letter dated 7-11-2003 withdrawing the earlier letter/affidavit dated 6-10-2003. Having confirmed the transfer application and the affidavits filed by the last letter dated 7-11-2003, it is not open to the petitioner to dispute the said letter. In fact, the petitioner has gone to the extent of denying the fact of submission of such letter, which is contrary to the material on record. As already referred to, a perusal of the letter dated 7-11-2003 clearly shows that it was not only signed by the proprietor of the petitioner concern, but also written in his own handwriting and the submission of such letter was also supported by the entry made in the Inward Register maintained in the office of second respondent. In the light of such abundant material available on record, it is not open to the petitioner to deny submission of such a letter dated 7-11-2003. In fact, the conduct of the proprietor of the petitioner concern also does not inspire confidence to accept what he has stated in the affidavit is true. In fact, as per the original application, he has even received a sum of Rs.5,00,000/- from third respondent, which is said to have been incurred by him towards obtaining the lease rights and investment made for the development of the mine. It is not open to the petitioner to go back and contend that third respondent failed to comply with certain of the conditions and, therefore, sought to withdraw the transfer application. In any case, as there is a clear material available on record to show that the original transfer application filed along with the required affidavits by both the petitioner and third respondent, seeking to transfer the mining lease, were pending before respondents 1 and 2 for passing appropriate orders, though the petitioner claims that the said application was withdrawn by an affidavit/application dated 6-10-2003, but in view of the finding recorded earlier that the said application/affidavit dated 6-10-2003 was withdrawn by letter dated 7-11-2003. Thereafter, there was no hurdle before the official respondents to process and pass appropriate orders on the transfer application. First

respondent, having satisfied as to the compliance of the rules and considering the report of second respondent, passed the impugned order. Mere non-reference to the letters dated 6-10-2003 and
7-11-2003 by first respondent is not material, as a reference to those letters is very much available in the proceedings of second respondent, basing on which the impugned orders were issued by first respondent. The impugned order of first respondent does not suffer from any illegalities or irregularities and, therefore, does not call for any interference by this Court. No other ground is neither raised, nor argued. The interim order of status quo stands vacated."

After disposal of the writ petition, Assistant Director, Mines and Geology, Ongole issued proceedings dated

13-7-2004 whereby he called upon the appellant to attend his office within seven days for execution of transfer lease-deed. It was also indicated in the communication sent to the appellant that if it fails to appear, then the transfer lease-deed would be executed in its absence. The appellant challenged the communication by filing revision petition before the State Government, which was dismissed by the Secretary to Government, Industries and Commerce (Mines-II) Department vide his order dated 21-5-2005. He noted the contentions urged on behalf of the appellant that permission accorded by the Director of Mines and Geology in proceedings dated 7-2-2004 did not confer any right either on the transferee or on the authorities to execute the transfer lease-deed; that Rule 12(5)(h)(viii) provides for transfer of lease with the prior sanction of the Director of Mines and Geology and Rule 12 (e) provides for the manner in which a licence or lease is to be executed and without following that procedure, the transfer lease-deed could not be executed in favour of respondent No.4; that non-execution of the lease-deed by the appellant had the effect of rendering the sanction granted by the Director as nugatory and held that in view of order dated 30-4-2004 passed by the High Court in Writ Petition No.4262 of 2004, there was every justification for execution of transfer lease-deed in favour of respondent No.4. Paragraphs 15 and 16 of the revisional order read as under:

"15. It is further observed that when agreed to transfer the lease by filing Form 'R', which is a statutory form for transfer of lease; and when all the requirements were fulfilled in this regard; the Director of Mines & Geology, Hyderabad, had issued transfer proceedings, which are strictly in accordance with Rule 12 (5)(h)(viii) of APMMC Rules, 1966. These transfer proceedings were also upheld by the Hon'ble High Court of A.P. Hence, it is obligatory on the part of transferor to transfer the quarry lease.

16. In view of the said order of the Hon'ble High Court upholding the quarry lease transfer order of the authorities, since the petitioner herein did not turn up for execution of the transfer of lease deed, the Assistant Director of Mines & Geology, Ongole, vide his Letter No.6260/Q/1996 dated 13-07-2004, requested the petitioner herein based on the directions of the Director of Mines & Geology, Hyderabad to attend his office within 7 days from the date of receipt of the letter for execution of the transfer lease deed, failing which the transfer lease deed will be executed in the absence of the petitioner with the transferee. Hence, in view of what is observed in the foregoing paras, Government do not find any merits on the arguments of M/s.D.R. Enterprises and also do not find any valid reasons to interfere with the letter issued by the Assistant Director of Mines & Geology, Ongole, vide No.6260/Q/1996, dt.13-07-2004. Therefore, Government hereby dismiss the revision application filed by Sri K. Dhananjay Reddy, Prop. M/s.D.R. Enterprises. Government also hereby accord extension of time for 30 days for execution of transfer lease deed."

As a sequel to dismissal of the revision petition, Assistant Director of Mines and Geology issued proceedings dated 25-5-2005 whereby he informed the appellant regarding transfer of quarry lease in favour of respondent No.4. For the sake of convenience, the relevant extract of communication dated
25-5-2005 is reproduced below:

"Since, the Government has dismissed the revision application filed by M/s.D.R. Enterprises against the letter issued by this office vide reference 5th cited and hence the transfer of Quarry Lease deed has been executed on 25-5-2005 with the transferee. The lessee firm is hereby permitted to continue the quarrying operations for Black Granite in the above said quarry leased area for the unexpired portion of lease period i.e., up to 20-12-2011 duly observing the conditions of the quarry lease deed in Form-G with conditions – imposed by the Director of Mines and Geology, Hyderabad in the proceedings 1st cited and also Appendix enclosed herewith the proceedings and also subject to the conditions that the quarry operations should not hamper the conditions of N.S.P. Canal if passing nearby."

The appellant challenged the proceedings/orders dated 13-7-2004, 21-5-2005 and 25-5-2005 in Writ Petition No.14395 of 2005 by reiterating that sanction granted by the Director of Mines and Geology for transfer of lease in favour of respondent No.4 had become redundant because it had not executed the transfer lease-deed.

Another plea taken by the appellant was that there is no provision in the Rules under which the department can transfer the lease in favour of respondent No.4 without execution of lease-deed in accordance with Rule 12 (5)(h)(viii) of the Rules.

In the counter-affidavits filed on behalf of the official respondents and respondent No.4, it was pleaded that in view of dismissal of Writ Petition No.4262 of 2004, the petitioner (appellant herein) cannot question the action taken by the authorities in the matter of transfer of lease. It was further pleaded that transfer lease-deed had been executed in pursuance of the application submitted by the appellant in the prescribed format i.e., Model Form-R and, therefore, it was not open to be questioned. Another plea taken by the respondents was that the appellant cannot frustrate the transfer of lease by deliberately refraining from executing the transfer lease-deed.

The learned Single Judge referred to order dated
30-4-2004 passed in Writ Petition No.4262 of 2004 and held that the application submitted by Sri K. Dhananjay Reddy seeking transfer of quarry lease in favour of respondent No.4 holds good; that the proceedings had been taken by the department to transfer the lease in favour of respondent No.4 on the basis of Form-R submitted by Sri K. Dhananjay Reddy and that once an application has been made by the transferor and the same is accepted by the department, the latter can

transfer the quarry lease because the sub-soil rights of the land vests with the department.

Sri D. Prakash Reddy, learned Senior Counsel reiterated the grounds taken by the appellant for questioning the various proceedings and orders issued/passed by respondents No.1 to 3 and argued that the reason assigned by the learned Single Judge for upholding the transfer of lease in favour of respondent No.4 should be declared as erroneous and the order under challenge should be set aside because, while examining the appellant's challenge to order dated 21-5-2005, the learned Single Judge overlooked the mandate of Rule 12 (5)(h)(viii) of the Rules. Sri Reddy emphasized that transfer application made by the appellant on 6-11-2001 will be deemed to have become infructuous because the same had been withdrawn on 6-10-2003. He then argued that even if the finding contained
in order dated 30-4-2004 passed by the learned Single Judge in Writ Petition

No.4262 of 2004 that the transfer application was subsisting is treated as correct, the department cannot suo motu execute the transfer lease-deed. Learned counsel submitted that there is no provision in the scheme of the Rules under which a lessee can be compelled to execute transfer lease-deed and, therefore, the direction given by the Director of Mines and Geology for execution of transfer lease-deed in favour of respondent No.4 should be declared as nullity.

Learned Government Pleader for Mines and Geology and Smt. N. Shobha, learned counsel for respondent No.4 supported the order under challenge and argued that the learned Single Judge did not commit any error by refusing to entertain the appellant's challenge to the action of the department to transfer the lease in favour of respondent No.4, because the application for transfer of the lease made by Sri D. Dananjay Reddy was very much subsisting on the date of transfer. They submitted that order dated 30-4-2004 passed by the learned Single Judge in Writ Petition No.4262 of 2004 had become final and, therefore, the appellant had no option but to execute transfer lease-deed. Smt.Shobha further argued that the obstructive attitude adopted by the appellant left the department with no option but to transfer the lease in favour of respondent No.4 and the learned Single Judge rightly declined to nullify the action taken by the department.

We have thoughtfully considered the respective arguments. Admittedly, the proprietor of the appellant had filed an application on 6.11.2001 for transfer of quarry lease in favour of respondent No.4 and after considering the same, the Director of Mines and Geology granted permission for transfer of the quarry lease. This was unsuccessfully challenged by the appellant in Writ Petition No.4262 of 2004. The learned Single Judge dismissed the writ petition on 30th April, 2004 by holding that the transfer application filed on 6.11.2001 was subsisting and the same could be acted upon. The appellant did not challenge the order of the learned Single Judge either by filing writ appeal before the Division Bench or petition for special leave to appeal before the Supreme Court. Therefore, the finding recorded by the learned Single Judge that transfer application dated 6-11-2001 was subsisting and the same could be acted upon will be deemed to have acquired finality and is binding not only on the authorities of the department, but also on this Court. As a corollary to this, it must be held that the decision taken by the departmental authorities to act on the transfer application submitted by the proprietor of the appellant in the prescribed format cannot be dubbed as arbitrary. The appellant cannot take advantage of its

own wrong, namely, failure to respond to communication dated 13-7-2004 sent by the Assistant Director, Mines and Geology for execution of the transfer lease-deed.

Rule 12(5)(h)(viii) of the Rules contains a bar against the transfer etc., of the lease without prior sanction of the Director, but there is nothing in the language of that Rule from which it can be inferred that sanction granted by the Director for transfer of lease and consequential action taken by authorities subordinate to him for giving effect to the transfer of lease is illegal or ultra vires the rules. Rather, we are convinced that

Director, Mines and Geology did not commit any illegality when he acted on the transfer application made by the appellant and the consequential action taken by the Assistant Director for transfer of the lease in favour of respondent No.4.

No other point has been argued.

For the reasons mentioned above, the appeal is dismissed.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

March 17, 2006

Grr/svs/vtv